

## DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

July 9, 1981



## ALL-COUNTY INFORMATION NOTICE I-88-81

TO: All County Welfare Directors

SUBJECT: CURRENT LITIGATION: GREEN v. OBLEDO, LOWRY v. OBLEDO

## REFERENCE:

On May 5, 1981 the Sacramento County Superior Court issued a preliminary injunction in the Green v. Obledo lawsuit. This injunction prohibits enforcement of Eligibility and Assistance Standards (EAS) Section 44-113.241(d) to the extent it disallows as a deduction from the earnings of an applicant or recipient of Aid to Families with Dependent Children (AFDC) all actual expenses of using a private automobile as transportation to and from work and on the job.

This preliminary injunction was based on the March 5, 1981 California Supreme Court opinion in the Green case, which concluded that EAS Section 44-113.241(d) is invalid. This opinion further provided that plaintiffs could seek retroactive relief (i.e., benefits denied in the past under the invalid regulation) and that they were entitled to a new hearing in the superior court on the validity of the remainder of the work related expense regulations.

This hearing is scheduled on July 27, 1981 in the Sacramento County Superior Court. The issue to be determined at the hearing is how far back retroactive benefits will be allowed. Other issues that require resolution, and may be subject to further litigation, concern the type of verification necessary to establish eligibility for retroactive benefits and whether fixed transportation expenses such as car payments and insurance may be prorated between work and personal mileage. We are hopeful that these remaining issues can be resolved without litigation in the next few weeks.

Regardless of how the above issues are resolved, it is clear that any regulations concerning work related transportation expenses that provide a standard such as the 15 cents per mile allowance will have to be rebuttable. We are determining how best to implement the injunction and the remaining issues as well. During this process we have met with a subcommittee of the California Welfare Directors' Association to ensure full recognition of county concerns. We also are evaluating ways to notify current and former AFDC recipients who may be eligible for increased AFDC benefits as a result of this suit.

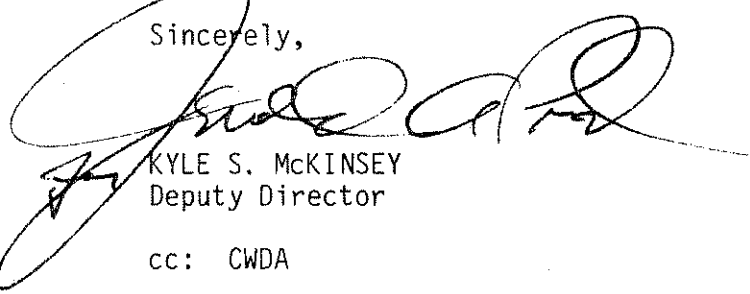
As soon as possible we plan to submit emergency regulations to the Office of Administrative Law (OAL) for approval. These regulations will deal with the treatment of current actual work related expenses.

In addition to the developments in Green, the Department is taking steps to implement the decision of the Court of Appeal in the case of Lowry v. Obledo. In that case, the court agreed with plaintiffs' contention that EAS Section 44-113.241(b) was invalid insofar as it failed to provide for individualized determinations of whether the incurred cost of child care was reasonable. The section impermissibly placed an absolute bar against allowing as work related expenses deductible from a recipient's income those child care expenses paid to a member of the recipient's household. Our petition for hearing to the Supreme Court was denied. As in Green, implementation of the Lowry decision will involve retroactive relief and notification to the affected class of recipients. We plan to submit to OAL emergency regulations on Lowry at the same time as those on Green.

We will keep you advised of any further significant developments in these lawsuits.

If you have any questions, please contact your AFDC Management Consultant at (916) 445-4458.

Sincerely,



KYLE S. McKINSEY  
Deputy Director

cc: CWDA